

ORAL ARGUMENT NOT YET SCHEDULED

Nos. 23-1125 & 23-1165 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNION PACIFIC RAILROAD COMPANY, et al.,
Petitioners,

v.

SURFACE TRANSPORTATION BOARD
and UNITED STATES OF AMERICA,
Respondents,
and

CANADIAN PACIFIC KANSAS CITY LIMITED, et al.,
Intervenors.

CONSENT MOTION TO CONTINUE ABEYANCE

Respondent Surface Transportation Board hereby moves the Court to continue the abeyance in these consolidated cases pending resolution of the Board's unopposed motion filed in *Commuter Rail Division of the Regional Transportation Authority d/b/a Metra v. Surface Transportation Board, et al.*, No. 23-1274 (D.C. Cir.) requesting consolidation of that case with these proceedings. Counsel for the Board has contacted counsel for all parties in these proceedings and all consent to this motion.

Petitioners in these proceedings—Union Pacific Railroad Company and The Coalition to Stop CPKC—seek review of the Board’s March 15, 2023, decision approving, with conditions, Canadian Pacific Railway Limited’s acquisition and control of The Kansas City Southern Railway Company and its affiliates (*Approval Decision*). On August 3, 2023, the Court ordered that these cases be held in abeyance pending action by the Board on requests by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) and another party for reconsideration of the *Approval Decision*.

On September 29, 2023, the Board filed a status report indicating that agency proceedings had been completed. It also filed a consent motion requesting that the Court continue to hold these consolidated cases in abeyance to allow for the identification and consolidation of any additional petition for review that may be filed. By order dated October 2, 2023, the Court ordered that these proceedings remain in abeyance and directed the parties to file motions to govern future proceedings by November 17, 2023.

Also on September 29, 2023, Metra filed a petition for review of the *Approval Decision* as well as the Board’s September 1, 2023, order resolving the requests for administrative reconsideration (*Reconsideration Decision*). See Pet. for Review, *Commuter Rail Div. of the Reg’l Transp. Auth. d/b/a Metra v. STB*, No. 23-1274 (D.C. Cir. Sept. 29, 2023). No other party has filed a petition for

review of the *Approval Decision* and/or the *Reconsideration Decision*. On November 1, 2023, the Board filed a motion in the Metra docket to consolidate that case with these proceedings, in keeping with the Court's policy of consolidating all petitions for review of agency orders entered in the same agency proceeding. In its motion, which is pending, the Board indicated that none of the parties in any of these proceedings opposes consolidation.

So that there may be certainty regarding the scope of this consolidated proceeding before the parties file further motions to govern, the Board asks that the Court continue the abeyance to allow for resolution of the consolidation motion in the Metra case. If the Court grants this abeyance, the parties propose to file motions to govern future proceedings by December 1, 2023. Counsel for the parties in these proceedings, as well as counsel for Metra, have recently discussed a proposed briefing schedule that includes Metra, and which they anticipate submitting to the Court by that date, assuming the Metra proceeding has been consolidated in the interim.

Respectfully submitted,

CRAIG M. KEATS
General Counsel

ANIKA S. COOPER
Deputy General Counsel

DREW VAN DENOVER
Attorney

/s/ Adam M. Kress
ADAM M. KRESS
Attorney
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423
(202)-245-0149
adam.kress@stb.gov

November 17, 2023

**CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATION AND
TYPEFACE AND TYPE-STYLE REQUIREMENTS**

This document complies with the word limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 482 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word and Times New Roman font, size 14.

/s/ Adam M. Kress

ADAM M. KRESS

Attorney

Surface Transportation Board

395 E Street, SW

Washington, D.C. 20423

(202)-245-0149

adam.kress@stb.gov

November 17, 2023